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| In Re Applications of: |) | MM DOCKET NO. 96-123 |
| |) | |
| FAMILY BROADCASTING, INC. |) | File No.: BRH-951204YF |
| |) | |
| For Renewal of License |) | |
| for Station WSTX(FM) |) | |
| Christiansted, Virgin Islands |) | |

Volume: 1
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Place: Washington, D.C.
Date: July 11, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Applications of:) MM DOCKET NO.: 96-123
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FAMILY BROADCASTING, INC.) File No.: BRH-951204YF
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For Renewal of License)
for Station WSTX(FM))
Christiansted, Virgin Islands)

Courtroom 4, Suite 201
Federal Communications
Commission
2000 L Street, N.W.
Washington, D.C.

Thursday,
July 11, 1996

The parties met, pursuant to the notice of the
Judge, at 9:05 a.m.

BEFORE: HON. EDWARD LUTON
Administrative Law Judge

APPEARANCES:

For the Commission:

JACQUELINE E. ELLINGTON, ESQ.
ROBERT ZAUNER, ESQ.
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W., Room 8210
Washington, D.C. 20554
(202) 418-1430

Heritage Reporting Corporation
(202) 628-4888

I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

IDENTIFIED RECEIVED REJECTED
None.

Hearing Began: 9:05 a.m. Hearing Ended: 9:18 a.m.

1 P R O C E E D I N G S

2 JUDGE LUTON: Could I have the appearances,
3 please?

4 MS. ELLINGTON: Jacqueline Ellington, Your Honor,
5 for the Government. And this is Robert Zauner.

6 JUDGE LUTON: Thank you. All right, this is the
7 in the matter of Family Broadcasting, Incorporated. There
8 apparently is no appearance this morning by the
9 representative of Family.

10 I saw a written notice of appearance that purports
11 to have been filed on June 14. It just showed up in my
12 office a couple of days ago. It is executed by a Mr.
13 G. Luce A. James, Esquire. I would have expected to see him
14 if a Family representative were here this morning.

15 I have heard nothing from Family about what its
16 intentions may be. Also, I notice that the designation
17 order itself required certain filings to be made by the
18 Licensee, each within 30 days of the release of the
19 designation order. And that order was released May 30.

20 Presumably, if Family intends to carry the burdens
21 that have been placed upon it in this case, it would have
22 submitted these materials. Those submissions were to have
23 been made initially to the Administrative Law Judge. Again,
24 I have received absolutely nothing. So, Family's intentions
25 remain a matter of doubt, despite the fact that the written

1 notice of appearance recently arrived.

2 Has the Mass Media Bureau received anything -- I
3 mean by way of filings -- from Family? I do not mean
4 conversations. They ought to talk to me.

5 MS. ELLINGTON: No, we have not, Your Honor.

6 JUDGE LUTON: You have not received anything. And
7 yet, there is a notice of appearance that has surfaced. And
8 there is a nonappearance at this conference, which has been
9 scheduled for a long time, and no word.

10 This situation may be one in which it is time to
11 dismiss this application, but I do not want to do that now.
12 I certainly would like to hear from Family, particularly in
13 light of the fact that a notice of appearance has shown up.
14 But, of course, I have no control over that. We may or may
15 not hear from Family.

16 But what I will do is, I will wait a while longer
17 to see if anything does develop. And if it does not, then I
18 will take action on the renewal application.

19 Today, I intend to set dates. And these are dates
20 which, even though Family is going to get them without any
21 say about them, they will apply if, at some point down the
22 road we hear from Family and Family decides that it, indeed,
23 is going to participate fully in this case, Family is going
24 to be bound by these dates just as everyone else will be.

25 The hearing is already scheduled. That will begin

1 October 2, 1996. Prior to that date, on or by September 27,
2 I am going to ask the parties to exchange their lists of
3 witnesses. And before that, by September 16, I am going to
4 ask that the written exhibits be exchanged between the
5 parties.

6 And we ought to note particularly that it has been
7 assigned both burdens of proceeding and proof in this case.
8 Family, in other words, has got to do something.

9 So, the exhibit exchange being September 16; the
10 witness notification date September 27; with the hearing to
11 begin on the long ago established date of October 2, 1996.

12 Let me ask the Mass Media Bureau, is it usually
13 the case when the Commission requires an Applicant to make
14 submission such as this environmental information -- new
15 responses for some of its application, that is usually done
16 by the Applicant. I have not, quite frankly, had to pay
17 much attention to that.

18 The Bureau probably has faced this situation
19 before. And what has happened in the past, if you are able
20 to say, when they are required by the designation order to
21 make submissions such as these and the Applicant does not do
22 it? Does a motion generally follow, seeking dismissal for
23 failure to abide by the requirements of the designation
24 order or what?

25 MS. ELLINGTON: Yes, Your Honor, and I had

1 intended to move to --

2 JUDGE LUTON: I see. For that very reason?

3 MS. ELLINGTON: Yes, for failure to prosecute,
4 because the two required statements were not filed.

5 JUDGE LUTON: Have not been filed. Even if they
6 were to be filed now, they would not have been timely filed,
7 in any event, would they?

8 MS. ELLINGTON: That is correct, Your Honor. And
9 we do have some question about whether a timely notice of
10 appearance and accurate notice of appearance was filed.

11 JUDGE LUTON: There is a peculiarity or two there,
12 also, I think.

13 Well, I am not going to tell the Bureau not to
14 file its motion. I am in no position to do that. I can
15 only act on the motion if and when it is submitted. I have
16 indicated my desire to wait just a little bit, even though I
17 am not entirely certain what I am waiting for.

18 When did the Bureau intend to file its motion?
19 Pretty soon?

20 MS. ELLINGTON: Yes, Your Honor. Actually, I was
21 going to make a verbal motion today --

22 JUDGE LUTON: Oh, okay.

23 MS. ELLINGTON: -- if there was no appearance.

24 JUDGE LUTON: Okay. (Brief pause.) Why don't you
25 go ahead and make your motion?

1 MS. ELLINGTON: At this time, Your Honor, the Mass
2 Media Bureau moves to dismiss the application for renewal
3 for failure to prosecute. Because the RF radiation
4 statement was not filed. Because the Form 303-S responses
5 as to alien ownership and character qualifications were not
6 filed. And, I guess, also because there is no appearance
7 here today, we would move to have the application renewal
8 dismissed.

9 JUDGE LUTON: (Brief pause.) You had some
10 concerns about the notice of appearance. Would you state
11 those?

12 MS. ELLINGTON: Well, the notice of appearance
13 that was received, Your Honor, was not properly filed with
14 the Commission, as is required. And the statement of
15 intent, which is also required by the HDO, was not included
16 in the notice of appearance that was received.

17 JUDGE LUTON: That, too, would constitute part of
18 your motion, part of the basis for your motion? Or would
19 it?

20 MS. ELLINGTON: Yes, Your Honor.

21 JUDGE LUTON: So, you would press that item?
22 Well, it is certainly not nice that Family has failed to say
23 to anything to us. And a pert little note is all that,
24 essentially, that I have seen from Family. And that is that
25 disputed notice of appearance that was recently sent in.

1 Their license is on the line and, yet, essentially
2 no activity on the part of Family. Why, then, should I go
3 through this procedure where they now have a schedule for an
4 Applicant that essentially, despite the filing of the paper
5 recently, has shown no inclination to participate in this
6 case?

7 It certainly has not done the things that the
8 designation order required it to do. There does not seem to
9 be that level of response which would warrant carrying this
10 out any further.

11 All things considered, that is the view that I am
12 going to take and I am going to grant the motion to dismiss.
13 And I am going to dismiss the renewal application of Family
14 Broadcasting, Incorporated, for failure to prosecute. I
15 think its failure is clear. And I am going to dismiss for
16 the reasons that have been stated by the Bureau. That is
17 the way that we will proceed.

18 Now, just as a procedural matter, I do not intend
19 to try to recite in any writing that I issue the reasons for
20 the dismissal. I will let my statements as they will be
21 reflected in the transcript provide the basis.

22 But I think I do need to issue a writing, one
23 which will -- let us see. This is a renewal application.
24 If I deny the renewal or dismiss the license, it would
25 simply be a dismissal -- or, rather, the application. It

1 would just be a dismissal of the application, I believe. I
2 think sometimes it is necessary to deny the application.
3 Here, I am not acting on the application. Well, I am acting
4 on it, but I am dismissing it. I think a dismissal should
5 suffice.

6 What do you think, Bureau?

7 MR. ZAUNER: Your Honor, the application, as I see
8 it, is for renewal of license.

9 JUDGE LUTON: Right.

10 MR. ZAUNER: And I would think we would deny
11 renewal. And there is not an application. Well, I guess it
12 is an application for renewal. I think you might be safe
13 either way.

14 JUDGE LUTON: I will issue something and we will
15 let it go. Let Family take a step to clear it up once and
16 for all, if Family is so inclined.

17 Is there anything else?

18 MS. ELLINGTON: No, Your Honor.

19 JUDGE LUTON: All right. Thank you very much. We
20 will be in recess.

21 MS. ELLINGTON: Thank you.

22 (Whereupon, at 9:18 a.m., the proceeding was
23 recessed.)

24 //


25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-123
CASE TITLE: Family Broadcasting
HEARING DATE: July 11, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 7.11.96



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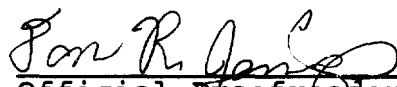
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 07/17/96


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